HUMAN EVENTS

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The Meaning of the Crisis: The Capital is still groping, amid the blasts and counterblasts of state and Federal officials, to assess the full significance of the Little Rock invasion. Disagreements are frequent, but almost all are united on this: what has happened is enormous, the biggest bombshell to fall into domestic American politics in years. Many go back to Truman's 1952 seizure of the steel plants for a similar explosion.

A round-up of the most reliable assessments in the Capital today, as gleaned by HUMAN EVENTS, runs as follows:

● It is apparent that President Eisenhower has been shepherded into a disastrous course by the "modern Republican" politicians who populate the Executive branch of the Government. In a press conference September 11, 1956, the President outlined his duties, and limitations, under American law. He told reporters:

> **"I do know this. In a place of general disorder the Federal Government is not allowed to go into any state unless called upon by the Governor, who must show that the Governor is unable with the means at his disposal to preserve order. I believe it is called a posse comitatus — and I am now going back to my staff school of 1925 — of 1882, and that is the thing that keeps the Federal Government from just going around where he pleases to carry out police duties."**

Ike was dissuaded from this previous stand, it is believed, by the argument that his preachments of "patience" from Newport were creating an image of softness towards Governor Faubus. This, it was felt, would have cancelled out the GOP's strenuous bid for the Negro vote in this session of Congress (see HUMAN EVENTS for September 21, 1957).

● The effect of the action on conservative Republicans has yet to be calculated. Many Republican believers in states' rights had chafed under the recently passed "civil rights" bill, and the spectacle of bayonet-wielding troops in an American town vastly intensified their displeasure.

A large number of GOP leaders in the South are resigning in indignation. Republican precinct workers canvassing for funds in the city of Washington, and campaigning for gubernatorial candidate Ted Dalton in Northern Virginia, report that the going is also rough among the rank and file. Many Republicans encountered in door-to-door canvasses express — in no uncertain terms — their distaste for the Little Rock invasion.

GOP strategists hope this feeling will abate before the elections of 1958 and 1960; but it is pointed out that, under the present "civil rights" course of the Administration, other incidents may well arise to bring about still further defections.

● On the Democratic side of the ledger, party dissension is even more in evidence. A third party in the South, with substantial grass roots support, is now regarded as a certainty for 1960. But the question which arouses debate here is whether it will have the support of enough recognized political leaders to carry several states. (If neither the Republican nor Democratic nominee should win a majority in the Electoral College, the election — under the Constitution — is thrown into the House of Representatives. Each state then has a single vote, and the choice must be made from the three leading candidates.)

In 1948, Strom Thurmond carried four states — Alabama, Louisiana, Mississippi and South Carolina — under the States' Rights party banner. But he had the support of the state Democratic organization in each case. In 1956, on the other hand, the States' Rights parties had no support from the State Democratic leaders. With this handicap — which meant that the movement had relatively little chance to make headway — their virtually spontaneous vote of roughly 250,000 (the counted vote) is regarded as phenomenal.

Southern leaders like former South Carolina Governor James F. Byrnes are now making unmistakable gestures in the direction of a third party. They are being egged on by Northern Democratic "liberals" like Senator Paul H. Douglas, who says he would like to run the Dixiecrats out of the Democratic fold. Douglas thinks his party could get 90 per cent of the Negro vote as well as the entire labor-"liberal" vote if it was not hobbled by Southern conservative committee chairmen in the House and Senate.

Out of the Past: *Attorney General Herbert Brownell, testifying on the "civil rights" bill, February 16, 1957:* "Since there is not the slightest suggestion on the part of any responsible public official of bringing in matters of the militia into the civil rights area, I think it would be quite misleading really to continue with an abstract matter which is not pertinent. . . .

"I believe there is here an implication that the President of the United States would act recklessly, if not unconstitutionally, and I just cannot sit by and have the record contain any such implication of that. . . .

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"I am rather disturbed by you even raising these points because as I said so many times, public statements by persons who intimate that there is any such thought in the minds of anyone here in Washington to use the militia in these cases does not represent the true state of facts, and I frankly think that the only reason it can be brought into the discussion is to confuse the issue."

Bureaucrats and Budgets: A phenomenon frequently reported in HUMAN EVENTS is the bitter-end determination of Washington bureaucrats, in squandering Government funds, to evade the will of Congress and the people. Reporting on the status of the Budget, August 10, 1957, HUMAN EVENTS disclosed that — while Congressional Budget cuts were estimated at over $4 billion — many agencies refuse "to pace their activities according to the funds allotted to them." This, it afterwards developed, was the reality behind the President's attempt to belittle the Budget-cutting record of the 85th (see HUMAN EVENTS for September 7, 1957).

Now, with most of the legislators at home or on vacation, the bureaucrats in their marble sanctuaries are trumpeting renewed defiance. The Department of Health, Education and Welfare — headed by New Dealish Secretary Marion B. Folsom — last week announced that spending programs would not be curtailed because of the economy drive. (This announcement, say Washingtonians, contrasts strangely with the cries last spring that Congress was recklessly wielding the economy axe, with no regard for "essential" services.)

A further example of bureaucracy in conflict with Congress appears in the administration of the foreign aid program. Since 1953, foreign aid funds have been cut almost in half — from $6 billion to $3.4 billion. Yet, during the same period, the number of bureaucrats on the foreign aid payroll has increased by more than one-fourth — from 10,300 to 13,000.

But the most revealing announcement on the spending habits of bureaucracy was Budget Director Brundage's statement of last Tuesday. Brundage announced that, in spite of the Budget-cutting drive, the bureaucrats now planned to spend $189 million *more* than they had estimated before the economy drive began. President Eisenhower's original spending Budget estimated $71.8 billion to be disbursed. The midyear Budget review has raised the figure to over $71.9 billion.

This revelation brought a scathing denunciation from Washington's foremost economy advocate, Senator Harry Byrd of Virginia. "Obviously," Byrd said, "the President will use unexpended balances in previous appropriations" to keep spending at the same high rate. "This," he continued, "is contrary to the intent of Congress, which expected a substantial part of the reduction in appropriations to be reflected in this year's expenditures."

This turn of events, it is believed, will lead to a new and even more powerful economy drive when Congress reconvenes in January.

● Lurking just beneath the surface of bureaucratic wastefulness, and beneath the willingness of many "big spending" legislators to surrender to it, are the special interest groups. Former President Herbert Hoover, it is recalled, went to the root of the Budget problem last winter, when he said: "I will disclose to you who is mostly responsible for these unnecessary and wasteful expenditures . . . the most important opposition are the pressure groups . . . there are probably more than a thousand of these pressure groups, working day and night, to get what they call 'theirs.' So far as I know there is not a name among the registered lobbyists whose purpose is to decrease public expenditures."

Acheson: Republican strategists take heart at the return of former Secretary of State Dean Acheson to the role of spokesman for the Democratic party. Acheson recently became chairman of a foreign policy subcommittee of the Democratic National Committee — an appointment, say observers, that shows how completely the ADA dominates party councils.

Acheson has lost no time in getting back to his familiar avocation — appeasing the Chinese Communists. In a press conference last week, the Red Dean told reporters that America should "re-study" its policy toward Red China — meaning get ready to withdraw recognition from the regime of Chiang Kai-shek, and bestow it on the dictatorship of Mao Tse-tung. The former Secretary noted that our "allies" (meaning Great Britain) are anxious to step up trade with the Chinese Reds, and suggested that: "when you find yourself a minority of one all the time there is something wrong with your head."

To the surprise of no one, these remarks received an enthusiastic reception from the *Daily Worker*. Acheson's words, said the Communist mouthpiece, were "a welcome contrast to the bankrupt policy of the Administration."

Rating the 85th: The September issue of the *ADA World*, official organ of the left-wing anti-anti-Communist Americans for Democratic Action, rates the voting records of the Senators and Representatives of the 85th Congress during its first session.

Nine Senators, all Democrats, voted 100 per cent pro-ADA: *Carroll (Colo.), Clark (Pa.), Douglas (Ill.), Hennings (Mo.), Humphrey (Minn.), McNamara (Mich.), Neely (W. Va.), Neuberger (Ore.) and Symington (Mo.).*

Three Republican Senators voted strongly pro-ADA: *Case (N.J.), Ives (N.Y.), Javits (N.Y.).*

Thirty-six Representatives, all Democrats, voted 100 per cent pro-ADA. They were mostly from big-city areas of the North — New York, Philadelphia, Pittsburgh, Detroit and Chicago — where voters rarely know the names of their representatives in Congress and are easily regimented by the labor bosses.

In the opposite category, three Democratic and four Republican Senators voted 100 per cent anti-ADA. *The Democrats: Byrd (Va.), Frear (Del.), Robertson (Va.). The Republicans: Bridges (N.H.), Goldwater (Ariz.), Malone (Nev.), Williams (Del.).*

Twenty-two Republican and 10 Democratic Representatives voted 100 per cent anti-ADA.

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The Republicans: Hiestand and Utt (Calif.), Budge (Idaho), Keeney and Mason (Ill.), Adair (Ind.), Gross and Jensen (Iowa), Rees and Wint Smith (Kans.). Johansen, Bentley and Knox (Mich.), Andresen, O'Hara and Andersen (Minn.), Weaver, Harrison and Miller (Neb.), Gwinn (N.Y.), Scherer (Ohio), Berry (S.D.), Neal (W.Va.), Lawrence Smith and Van Pelt (Wisc.).

The Democrats: Boykin (Ala.), Herlong and Haley (Fla.), Flint and Davis (Ga.). Abernethy, Williams, Winstead and Colmer (Miss.), Barden (N.C.), Dorn. Ashmore, Hemphill and McMillan (S.C.), Murray (Tenn.), Thomas (Texas), Robeson, Abbitt, Tuck and Howard Smith (Va.).

Palace Guard: A reliable test of who wields influence in the Capital is "The Green Book," Washington's social register, which gives the order of precedence for all U.S. Government officials at social functions. Biggest news of the recently published version is that Sherman Adams, who holds no officially recognized position in Washington, has vaulted over two cabinet-rank Washington officials, all Senators, and all state Governors in the "Who outranks Whom" listings. Adams now comes directly after Marion Folsom, Secretary of Health, Education and Welfare.

Also deemed significant is the long tumble of ex-boy wonder Harold Stassen, formerly considered a cabinet-level official. Stassen is now ranked just beneath the Deputy Secretary of Defense, Donald Quarles.

Party Line: Senator James Eastland (D.-Miss.) and Representative Francis Walter (D.-Pa.), as chairmen of their respective Senate and House anti-Communist committees, continue their exposures of Communist propaganda abroad and within the United States, during the between-the-sessions lull. Among the disclosures resulting from their probes of the Communist apparatus:

● Foreign trade specialists testified before the House Committee on Un-American Activities that "even cautious business trading" with the Soviet Union and its satellites would be detrimental to the United States.

● Also continuing testimony before the House Committee were anti-Communist fighters from countries now under Soviet domination. "Significantly," says Walter, "all of the witnesses who testified on international communism urged severance of diplomatic relations with the Kremlin and the satellite governments."

● Senator Eastland issued a warning that the CPUSA is trying to exaggerate its losses in membership to "lull the American people to sleep." He noted how Joseph Clark, foreign editor of the *Daily Worker*, resigned from the party and wrote a letter (published in the *Worker!*) estimating that Party membership had dropped from 17,000 a year ago to 10,000 this year. "There must have been a good reason" for the *Daily Worker* to publish this information, he said, and "it is only logical to conclude that it is another step in a well-planned campaign to 'tranquilize' the American public."

Inflation: The most serious problem everywhere in the world today is recognized to be inflation — according to the speeches made at the recent conference in Washington of the International Monetary Fund, the World Bank and the International Finance Corporation. Straws in the wind from this significant financial conclave:

● The International Monetary Fund was the creation of Lord Keynes and Henry Morgenthau, the latter acting under the guidance of Harry Dexter White. But the Chief of the IMF today, Swedish economist Per Jacobsson, maintains that the world needs less welfarism, more private enterprise .

● Robert L. Garner, President of the International Finance Corporation, crowned the meeting with the slogan, "Private Enterprise — America's Best Export."

● Eugene R. Black, president of The World Bank, said: "The serious threat of inflation makes it extremely dangerous for governments to extend their activities beyond those areas where only government can provide the necessary capital. *Particularly, I deplore the decisions of governments which tend to reduce investment in their own legitimate spheres of activity in order to branch out into fields where private enterprise, domestic or foreign, is willing to do the job. . . .*"

Readers' Digest, in its current (October) issue, condenses Professor Harold B. Wess' article, "What is Past is Prologue," which appeared in HUMAN EVENTS for July 20, 1957. The *Digest* version is entitled, "Can we Solve Our Economy's Most Dangerous Problem?"

Contained also in the same issue of the *Digest* is a documented record of the Kohler strike, by W. L. White, entitled, "Strike Without End — the Kohler Story."

Letter from W. C. MULLENDORE, Chairman, Southern California Edison Company: "HUMAN EVENTS reports on the vital and rapidly changing picture from the world center of Washington, and those reports are very valuable because they are written with intelligence, courage and honesty."

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The Price of Power

Reviewed by GEORGE MORGENSTERN

Between 1942, when he presented his vision of war aims in *A Time for Greatness,* and 1957, when he harvests the sour fruits of World War II, the Korean war, and the cold war, Herbert Agar has never failed to set an exacting standard of performance for the American people. It now becomes apparent, from a reading of his recently published *The Price of Power* (University of Chicago; $3.50), that they have let him down.

Mr. Agar is able to bear his sad lot with uncommon fortitude by reason of the fact that he stands withdrawn from American life and Americans. He is domiciled at Beechwood, Petworth, Sussex, England, and has soiled himself with few of our national deficiencies and vulgarities for 15 years. He had enjoyed similar expatriation from 1929 to 1934.

In the interim American sojourn, he was almost as happily off as if he had remained in Britain. Through the patronage of his employer, the late Robert Worth Bingham, Roosevelt's ambassador to Britain, Mr. Agar was advanced to the editorship of the Louisville *Courier-Journal,* with full leisure to advocate American entry into World War II for the purpose of rescuing the British. In this endeavor, he was aligned with all of the organized interventionist groups and was a veritable fire-eater before the ladies' clubs.

Having accomplished the mission, Mr. Agar was commissioned a lieutenant commander and promptly returned to England to serve out the war as a propagandist in the London embassy. Upon divorce from his American wife, he married the wealthy widow of a former British minister of transport and is perhaps better known these days as the stepfather of Billy Wallace, a suitor for the hand of Princess Margaret, than as a profound thinker. Indeed, this may be the correct perspective.

Mr. Agar's thesis in *A Time for Greatness* was simple: The United States broke "the heart of mankind" and was guilty of a "great betrayal" because of Republican reservations to the League of Nations which were inacceptable to Woodrow Wilson. Thus the collapse of peace incident to the depradations of Hitler and Mussolini was on our heads (although the 52 members of the League, among them Russia, were remarkably apathetic). Pearl Harbor proved our sin: Mr. Agar knew nothing in 1942 about the maneuvering that produced that payoff and chooses to know even less now. So in 1942 he adjured us to signify our penitence by recognizing that "the burden of responsibility, once assumed, can never be laid down."

Having thus summoned Americans to an unrewarding destiny, Mr. Agar is diligent to inform them now that they have failed to live up to his expectations. Wanting to be quit of a dirty job, they demobilized too soon, and, when it became apparent that the grand design of collective security had gone awry, they let themselves be persuaded by the McCarthys and Jenners, and by the unfortunate example of the misguided Hiss, that things had miscarried because of treason in high places.

Indeed, nothing turned out right: "We were more and more committed — more and more overextended, some people said — yet every week we seemed to become less safe."

Then came Korea, and Mr. Agar gained fresh hope from Mr. Truman's Executive declaration of war, which, incidentally, contravened the Constitution and Public Law 264. "A stand had been taken," Mr. Agar rejoices; "the United Nations could act; Americans meant what they said!"

Though the war dragged along for 37 months, and, as Mr. Agar admits, "seemed endless and began to seem meaningless," Truman and Acheson and their kept chiefs of staff, who forbade victory, were right and General MacArthur and the American people, who demanded the right to win, were wrong. The Chinese Communist enemy presumably was right, too, for Mr. Agar's feelings are hurt that MacArthur should have "made a statement insulting to China" in blandly proposing Communist surrender.

" 'There is no substitute for victory,' said the General," remarks Mr. Agar of MacArthur. "He was wrong. He should have said there is no such thing as victory for those who are protecting civilization."

Cold comfort, perhaps, and not exactly distasteful to Communists, either, but leap to no conclusions: Mr. Agar has an out. His reference in 1942 to the Soviet Union as "an Asiatic tyranny" had, he proudly assures us, brought him condemnation from the *New York Times* Book Review "for underestimating the virtues of our great ally." Considering that the reviewer was Rex Stout and the forum as described, the judgment was hardly unexpected.

Mr. Agar does not further inform us that 15 years ago he sneered at "some of our newspapers" for their "graceless attitude toward the Russians who have saved us." He observed at that time that we had nothing to fear from the Muscovites, whom he deemed useful allies, even though afflicted with "economic boils," and never seemed to perceive that communism was not simply an economic system but a conspiracy against civilization, much more deadly than anything within the capacity of Hitler.

Simply to compare what he used to say with what he says now, matching the prospectus with the fulfillment, disposes of Mr. Agar as an oracle. He is not at all displeased that the United States should now keep knocking into dead ends in a maze which owes something to his contrivance. If we never come out, that is just the cursed inevitability of the way the world turns. The ancient ballad of the Earl of Douglas to which Mr. Agar refers is in point:

> But I hae dreamed a dreary dream
> Beyond the Isle o' Skye,
> I saw a dead man win a fight,
> And I think that man was I.

Applied no less to the exertions of the United States than to the labors of Mr. Agar himself, this is as apt and bitter a judgment as one is likely to encounter in assaying the results of interventionism.

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Vol. XIV, No. 40 HUMAN EVENTS October 5, 1957

Article Section *Printed in Two Sections*

WHAT IS "THE LAW OF THE LAND"?

By SAMUEL B. PETTENGILL

THE IDEA that whatever a judge says is law is actually "the law of the land" and must be obeyed by everyone as a matter of conscience and good citizenship is spreading like seeds in a whirlwind.

There are degrees of intensity of conviction with respect to this idea, depending on whether the judge is a state judge, a lower Federal court judge, or a United States Supreme Court judge.

Decrees of the Supreme Court of the United States on constitutional questions are given the highest priority as "the law of the land." No such presumption of impeccability is given the acts of constitutional lawmakers — state legislatures and Congress.

The Constitution, it is said, is "what the Supreme Court says it is." This quote is attributed to Charles Evans Hughes, but because he was a great lawyer I have always supposed he said it with something of a chuckle beneath his beard.

If the idea that "the Constitution is what the Supreme Court says it is," no matter what, becomes uncritically accepted, it can lead to more harm than segregation or integration or any other issue likely to arise. It can lead to the final destruction of what is left of the boundary lines between the states and the Federal Government. That would, of course, practically destroy the Constitution.

I somewhat doubt that this nostrum will be permanently swallowed by the American people without regurgitation. Perfumed as it is now with political incense, the horse sense of the people will nevertheless remind them that, of those who now bow the knee to our judicial priesthood, few paid much attention a few years back to its decrees that the Volstead Act and the 18th Amendment were also constitutional and the supreme law of the land — binding on one and all!

Nevertheless, the doctrine is now epidemic and needs to be examined before a new generation is completely brainwashed by long exposure to it.

We begin with a recent case. Two Army wives murdered their husbands while stationed abroad. The women were convicted by court martial and sentenced to life imprisonment. On June 11, 1956, the U.S. Supreme Court held their trial was constitutional. It became, so it is said, "the law of the land" that Army courts could try Army wives.

On June 10, 1957, on rehearing, the Supreme Court held that the Act of Congress which authorized their trial by court martial was unconstitutional and the murderers went free. What was the "law of the land" in 1956 ceased to be the law of the land one year, less one day, later. It was the same case, same wives, same facts, same dead husbands. Nothing new had been added or changed.

Nothing had been written into or erased from the Constitution in the meantime, to my knowledge, but the Constitution had changed! It commanded one thing one day, and the opposite on a following day. A majority of nine men said so.

NOW JUDGES have the right to change their minds, but who changed the Constitution? Not Congress, nor The People by amendment. The Court had changed it! If the Constitution is "what the Court says it is," then the Supreme Court is a supreme legislative body, or a super-Constitutional Convention.

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Told of this murder mystery, even a school boy will see that there is a flaw somewhere in this notion that what a judge, or several judges, *say* is the law of the Constitution *is* necessarily so.

If in this case, some state governor or jailor had been required to enforce the Court's first decision that the women had been given a constitutional trial and must be held in prison for life, but had challenged the correctness of the decision and refused to carry it out, would he be held in contempt of court by the American people a year later when the Court admitted that its decision was wrong and not the law of the land?

No. The fact is, of course, that the Supreme Court has reversed itself many times on constitutional questions. It attaches no such sanctity to its own previous judgments as the people are now told they must render. The Court has specifically held that judges, as well as executive or legislative officers of government, state or Federal, sometimes act unconstitutionally.

DURING THE TIME since the 14th Amendment was ratified on July 21, 1868, down to May 17, 1954, a period of 86 years, the Supreme Court had held (although not in a public school case) that the furnishing by public authority of equal but separate facilities to persons of different races or colors was not forbidden by the 14th Amendment. During that long period neither Congress nor the people, by amendment, had seen fit to change the Amendment to give it the meaning which the Court has now given it.

If ever court decisions and long usage and acceptance of them by the sovereign people during three generations of time had given a fixed meaning to words, this would seem to be a settled thing.

On the day the Court ruled in the school case, segregation was required by law or state constitution in seventeen states, and in the District of Columbia (under the jurisdiction of Congress itself), and was permitted by law in four other states, a total of 22 jurisdictions, whose legislative bodies, including Congress, had acted in the belief that segregation in the schools was constitutional, if facilities were equal. At least seven of these states were outside the South.

In 1867, a year after Congress had proposed the 14th Amendment, it established Howard University in the city of Washington as a separate coeducational institution of higher learning for colored men and women, as was, of course, common justice to them.

In 1862, while the war was on, Congress set up land-grant colleges for agriculture and the mechanical arts. In 1890, Congress authorized separate such colleges for white and colored students provided public funds for their support were equitably apportioned to them.

The school cases of 1954 reached the Supreme Court on appeal from four states — Kansas, South Carolina, Delaware and Virginia — and the District of Columbia, where Congress itself had enforced or permitted segregation for over 80 years. On the way up, three U.S. District Courts, each consisting of three Federal judges, as well as the Supreme Court of Delaware, relied on this long accepted interpretation of the 14th Amendment as "the law of the land" to the effect that equal but separate schools and schooling were constitutional. In the District of Columbia case, another U.S. District Court had ruled to the same effect. All of these judges, state legislatures and Congress were reversed by the Supreme Court, which also reversed its own previous ruling that had been "the law of the land" for 58 years. The Court held that everybody had acted unconstitutionally for 86 years!

In the light of these facts, the decision amounts to judicial legislation, or judicial constitutional amendment by a body of men who have *NO* constitutional power to enact law, or to amend the Constitution as the Court itself has many times said it has no power or right to do.

Strangely enough, the Supreme Court in the same term of court, had before it the question whether organized professional baseball was

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in violation of the Sherman Anti-Trust Act, passed in 1890. In 1922, it had held that it was not in violation. The Court in 1953 said that "The business has thus been left for 30 years to develop on the understanding that it was not subject to anti-trust legislation," and as Congress, the *law-making* body, had not seen fit to change the anti-trust law to apply to baseball, the Court would not attempt to do so by interpretation.

As stated above, Congress, which proposed the 14th Amendment for ratification by the States in 1866, at about the same time required or permitted segregation in the public schools of the District of Columbia. Succeeding sessions of Congress never changed this practice in the District.

Can it be supposed that Congress would have required or permitted segregation in the District of Columbia back in the 1860's, where it had and still has exclusive jurisdiction, if the members of the House and Senate thought the 14th Amendment, which they then were proposing to the States, forbade segregation?

It is an ancient maxim that "the intention of the law-giver is the law." This contemporaneous action of Congress with respect to segregation in the District of Columbia is conclusive evidence that the 14th Amendment was not intended by Congress to make segregation in the schools unconstitutional. The action of the State legislatures which ratified the 14th Amendment, and at the same time, or shortly thereafter enacted statutes requiring or permitting segregation in their own states, also shows that "the intention of the lawgiver" in ratifying the 14th Amendment was not what the Supreme Court now says it was.

THE CONSTITUTION, of course, says that only The People, through their Congress and State legislatures (or conventions) have the power to amend the Constitution.

But now the Supreme Court has done so in a case which concerns, directly and intimately, more families than any other decision it has ever rendered.

The Constitution says that *all* legislative powers granted the Federal Government are vested in Congress. Congress has never acted on this matter. It has not acted now. The public schools of the nation are now being ordered what to do, and when to do it, by the *Judicial* branch of the Government! And this despite the fact that the 14th Amendment itself states that *Congress* shall have the power to enforce its provisions.

The Constitution does *not* say that Supreme Court decisions are "the supreme law of the land." That high rank is given only to the Constitution itself, laws passed by Congress in pursuance thereof and treaties made by the United States. The judges in every State are bound thereby. But judges are constitutionally bound only to support the Constitution, constitutional acts of Congress and treaties.

They are not *constitutionally* bound to support what the Supreme Court *says* the Constitution is. Nevertheless, as a practical matter, it is important that the Constitution, Acts of Congress and treaties be given uniform application throughout the Union. Hence lower Federal judges and state judges as well as public officials generally and properly follow the Supreme Court's rulings, even if they think they are wrong. And surely lower judges who are overruled by the Supreme Court must think the Supreme Court is wrong in overruling *them,* many of whom had longer experience on the bench than the average Supreme Court judge.

But the yielding of their judgment to the judgments of the Supreme Court is done for *practical* reasons, not because it is their constitutional *duty* to do so.

A Supreme Court ruling is not the law of the land. It is only the *law of the case* before it. Its judgment is final as to the *parties to the case* for the simple reason that there being no higher court, they are stuck with it, right or wrong.

Abraham Lincoln made this perfectly plain in his opposition to the Dred Scott decision. He admitted that as to Dred Scott, the decision must control. But it would not control A. Lincoln. He said

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that if he were a Member of Congress and a similar question arose, he would not be bound by the Dred Scott decision. (See Abraham Lincoln, His Speeches and Writings, Basler, page 396.)

Thomas Jefferson's views on this point were equally clear. "It is a very dangerous doctrine to consider the judges the ultimate arbiters of all constitutional questions. . . . *The Constitution has erected no such single tribunal.* . . . There are two measures which if not taken, we are undone. First, to check these unconstitutional invasions of State Rights by the Federal judiciary. . . . The Government was divided into three branches in order that each should watch over the others and oppose their usurpations." (See The Jefferson Cyclopedia, Foley, pgs. 845-6.)

Thus spoke the founders of our two once great parties, to the same effect.

THE DILEMMA confronting us is not constitutional; it is a practical one. It is similar to that confronting the authors of the Declaration of Independence, when they said:

"Prudence, indeed, will dictate that Governments long established should not be changed for light or transient causes; accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed."

But when "a long train of abuses and usurpations" are so great as to outweigh the values of uniformity and stability in the law, a different question presents itself.

A majority of the Supreme Court has been upsetting "long established law" and creating chaos — the very thing citizens are being told not to do by refusing to accept its decisions.

It may be said that this discussion is "water over the dam." Politics being what it is, it is not likely that the school case will be undone.

Nevertheless, if the nonsense that "the Constitution is what the Supreme Court says it is" is dissipated by honest discussion of this or any other case of judicial usurpation, it may help preserve the Constitution and American liberties from further erosion.

One of the greatest of Supreme Court judges, Justice Story, said: "The Constitution was reared for immortality, if the work of man may justly aspire to such a title. It may, nevertheless, perish in an hour by the folly or corruption or negligence of its *only* keepers, THE PEOPLE."

This quotation appears in a book he wrote "to promote and encourage the study of the Constitution of the United States by her ingenuous youth." Would that his, or some other splendid treatise on the Constitution had been, and still was, a required text in every high school in the land!

If this had been done, it would be clear to all that ours is "a government of law and not of men"; that the Constitution does not permit any court to rewrite it to suit its notions of what it ought to say, and that judge-made "law," enforced by injunction, is as intolerable to all Americans as it proved to be to our millions of members of organized labor when they felt that they were being governed by courts and not by legislative bodies.

Meantime, let us have patience and good will toward each other.

The Hon. Samuel B. Pettengill, author, lecturer and radio commentator, was a Member of Congress from Indiana, 1931-39. His last contribution to HUMAN EVENTS was "From Lincoln to Eisenhower: Big Government Replaces States' Rights," May 4, 1957.

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